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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Broadband PCS C and F Block) WT Docket 97-82
Installment Payment Issues) DA 97-679

To: The Wireless Telecommunications Bureau

COMMENTS OF THE SMALL BUSINESS COALITION

The Small Business Coalition (the "Coalition"), by its attorneys, and in response to the invitation of the Wireless Telecommunications Bureau ("WTB") soliciting comments on proposals to modify installment payment plans for C Block and F Block personal communications service ("PCS") licensees,¹ hereby submits its comments in support of the general principle that modification of the existing installment payment plan will promote the public interest by encouraging vigorous competition in the wireless marketplace.

The Coalition submits, however, that any modification of existing obligations should be a measured response to the realities of the financial marketplace, rather than a rescue mission for licensees in financial jeopardy as a result of their own actions. The public interest will not be served by undertaking measures to bail out licensees that skewed the auction process by making bids beyond their financial capability. The Commission should ensure that it can not be accused of awarding over-zealous bidders with accommodating *ex post facto* rule changes designed to assist individual applicants who could not make initial payments under existing rules.

¹/ Public Notice, "Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues," WT Docket 97-82, DA 97-679 (June 2, 1997) (the "Public Notice").

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The circumstances which apply generally to all C Block licensees that have complied with the Commission's initial payment rules warrant general accommodations for all licensees in order to promote competition with the A and B Block licensees.

Modifications should be designed to afford all licensees the flexibility to implement infrastructure build-out and service in an economic and efficient manner, based on the business judgment of each licensee. Consistent with this position and in the interests of fairness, the Coalition also supports a refund of the installment payment made by many C Block licensees prior to the public availability of an announcement suspending installment payment obligations. In support thereof, the Coalition shows the following:

I. Introduction

The Coalition is an ad hoc group composed of C Block and F Block licensees which will offer to serve more than 15.5 million people across the United States.² Congress mandated that the Commission ensure the opportunity of small businesses to participate in the provision of wireless services.³ The Coalition members are small businesses which the Commission has found to be in compliance with all application and licensing requirements, including, with respect to those Coalition members holding C Block licenses, adherence to the current installment payment plan requirements. By definition, these licensees, and all other C Block and F Block licensees, are entitled to participate in the formulation of, and the benefit to be derived from, modifications of policies which currently apply uniformly to all PCS entrepreneurs. Accordingly, the Coalition commends the WTB's decision to open these issues

^{2/} See Attachment 1, Members of the Small Business Coalition.

^{3/} 47 U.S.C. § 309(j)(4)(D).

for public comment, and strongly opposes any suggestion that modifications of installment payment obligations should be addressed by individual waiver,⁴ or be tailored to manage the financial crises of any individual licensee. It is the current condition of the financial market and its impact on the basic principles underlying the entrepreneur licensing process which justifies a reevaluation of the current installment payment plan. This condition affects all small business licensees equally.

II. Modification of the Installment Payment Schedule Is Consistent With the Purpose of the Rules

In reevaluating the current installment payment plan, it is appropriate to consider that its general structure arose through a Commission rulemaking proceeding implemented in response to a Congressional mandate. The Commission established the basic contours of the installment payment plan in direct response to Congressional directives to promote the participation of small businesses in the wireless industry. Congress specified that the design of spectrum auctions be guided, *inter alia*, by the objective of "promoting economic opportunity . . . by disseminating licenses among a wide variety of applicants, including small businesses"⁵ The Commission addressed this issue by designing the installment payment plan as a partial remedy⁶ for difficulties arising from the fact that small businesses are disadvantaged by lack of access

^{4/} See, MCI letter of May 1, 1997.

^{5/} 47 U.S.C. § 309(j)(3)(B).

^{6/} In addition to establishing two distinct spectrum blocks reserved for designated entities (which, over time, became synonymous with small businesses) the Commission also implemented a system of bidding credits to assist small businesses.

to capital.⁷ Winning C Block bidders were, by regulation, eligible for a ten-year installment payment plan, with principal payment timing and the interest rate based upon their size, as measured by gross revenues.⁸

Both Congress and the Commission recognized that the public benefits directly from the participation of small businesses in the wireless arena when these entities are viable competitors, offering a choice among services and service providers. In implementing the Congressional directive to ensure a meaningful opportunity for designated entities to compete both at auction and in the marketplace, the Commission adhered to a consistent theme throughout the C Block rulemaking proceeding and in its responses to successive court challenges -- the critical importance of the swift commencement of the C Block auction, and the commencement of competitive service as soon as possible thereafter. The competitive position of C and F Block licensees, as influenced by changing capital markets, gives rise to the current inquiry and the need for modifications to promote the public interest in fostering vigorous competition.

In developing a regulatory response to these changed circumstances, it is appropriate to consider not only the underlying purpose of the original payment plan design, but also the Congressional admonition to avoid decisions regarding the design of payment schedules directed at implementing the promotion of "economic opportunity and competition . . . by disseminating licenses among a wide variety of applicants, including small businesses . . ." ⁹ based "solely or predominantly on the expectation of Federal revenues from the use of a system of competitive

⁷/ In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding: Second Report and Order, 9 FCC Rcd 2348, 2389 (1994).

⁸/ F Block winners were afforded similar, although not identical, benefits.

⁹/ 47 U.S.C. § 309(j)(3)(B).

bidding"¹⁰ Just as this principle guided the original design of benefits afforded small businesses, it must also be followed in developing modifications to the existing installment payment plan.

III. Changing Market Conditions Justify Reevaluation of the Installment Payment Plan

As Coalition members can attest, PCS is a capital-intensive enterprise. Construction of systems serving broad geographic areas will require collectively billions of dollars, and revenues in the critical initial period of operations may be insufficient to cover operating costs.¹¹ Accordingly, access to capital, through self-financing, private placement, or the public markets, is crucial to the success of C and F Block licensees.

Coalition members recognized these facts and developed prudent business plans designed to accomplish their respective goals. These plans incorporated expected capital costs as well as anticipated market conditions. As a result, Coalition members are well prepared to meet their debt-service obligations and do not face the "crisis" that is suggested to be hovering on the horizon for PCS licensees. Nonetheless, Coalition members are well aware that the financial climate has changed dramatically since the inception of the C Block auction, and agree that it is appropriate to reevaluate the structure of the installment payment plan in light of these developments. Furthermore, to the extent that the WTB deems it appropriate to modify the installment payment plan, the Coalition submits that each small business licensee should be afforded the opportunity to take advantage of flexible modified provisions. Regardless of a

¹⁰/ 47 U.S.C. § 309(j)(7)(B).

¹¹/ This is particularly true in rural areas of the country, a primary focus of many Coalition members. The principals of the majority of Coalition members are rural telephone companies or their affiliates.

licensee's specific capital needs, the benefits of installment plan modification should be available universally, and utilized to best fit each licensee's requirements.

As documented by many proponents of payment plan modification, significant changes have occurred in the capital markets since the inception of the C Block auction. The shares of major publicly-held A and B Block licensees have suffered a serious downturn in value, and the significant rise in the auctioned price of C Block licenses as compared with the A and B Block prices has generated market skepticism. General wariness was heightened by early C Block defaults and the continuing revelation of the financial woes and inadequacies of some C Block licensees. As a result, there have been no public equity offers for C Block licensees since the close of the C Block auction; moreover, the availability of high-cost public debt placements is questionable. Licensees also report difficulty in attracting private investors, resulting in a reliance solely on internal financing.

In addition to being snubbed by the financial markets, small business entrants face the additional hurdle of competing with operating A and B Block licensees, as well as with established cellular carriers. Moreover, subsequent to the initial PCS auctions, the Commission announced that additional wireless spectrum would be auctioned, changing the contours of the competitive arena. These developments also have affected the financial markets. It is clear that the environment within which the Commission formulated small business benefits and within which business plans were developed has changed dramatically.

It is likely that potential investors are awaiting a clear indication that C Block and F Block licensees are viable players in the marketplace. Modification of the installment payment plan will, therefore, provide a general market signal, improve the environment for investment,

and continue to enhance the goals of competition as licensees channel ready capital into build-out and operation.

Vigorous, consumer-oriented competition was the goal of the Commission's original installment payment plan. Reassessment of the original design, however, is necessary in order to realize this goal by ensuring access to the financial resources required to execute construction plans.

IV. Proposal of the Coalition

Currently before the Commission are proposals for modification of the installment payment obligations which range from changing the quarterly installment obligation to an annual installment payment,¹² to reduction of the principal amount due.¹³ These proposals cite current financial market conditions as the primary cause for concern. Proponents of modification state that the effects of a hostile market are heightened by an increased demand for resources resulting from the current installment payment schedule. Resources which otherwise could be devoted to development of competitive systems in the crucial early days have been diverted to debt service. Competition therefore suffers as the head-start enjoyed by A and B Block players increases.

Although each plan addressed the identified issues, it is unlikely that there exists a single solution appropriate for all C Block licensees. These licensees, while similarly-situated in terms

^{12/} On March 13, 1997, Alpine PCS, Inc., DCR PCS, Inc., Eldorado Communications, LLC, Indus, Inc., KMTel LLC, Mercury PCS, LLC, Miccom Associates, NextWave Communications, Inc. and R&S PCS, Inc. (referred to in the Public Notice as the "Guitierrez Letter") filed a consolidated petition requesting implementation of an annual installment payment schedule.

^{13/} See, e.g., proposal of General Wireless, Inc. (May 6, 1997) recommending discount of C Block price to amount consistent with that paid by A and B Block licensees.

of the requirement to fund build-out and operation, nonetheless have each already made a series of distinct choices which reflect individualized planning and implementation. Accordingly, it is appropriate to recognize the existence of these business plans and allow for an element of self-direction within the framework established by the Commission.¹⁴

Although fully appreciating that individual negotiations with each of the licensees is unwieldy, the Coalition submits that, in the context of reevaluating the installment payment plan generally, it is appropriate to consider the fact that each licensee faces different capital requirements and should, within reason, have some choice regarding the modification of a significant debt obligation, the current structure of which is already incorporated into on-going operations. In general, because different licensees have taken different courses to address the degenerating availability of capital, some licensees will be served by a plan which postpones the installment payment obligation for a fixed period. Other licensees would be better served by an alternative proposal that would provide roughly the same present-day value as the postponement of installment payments.

The Coalition is aware of many proposals before the Commission which advocate a reduction in the principal amounts due to the government. In addition to any appropriate discount which is found to be warranted, the Coalition submits that alternative payment methodologies are also appropriate. The Coalition therefore proposes that each small business

^{14/} The Coalition notes for the record that while some aspects of the installment payment plan are the product of rulemaking, other details were established by WTB fiat, and made known to winning bidders only when they were presented with the first of a series of Security Agreements and Installment Payment Plan Notes. These notes announced both the interest rate (reconsideration of the seven percent interest rate is the subject of a companion Public Notice issued by the Commission) and the quarterly payment schedule.

licensee¹⁵ be allowed to choose, on a confidential basis, from among the following alternative payment plans within a specified period of time:¹⁶

1. In accordance with the MCI proposal, a five-year moratorium on all interest and principal payments, with interest accruing on unpaid interest; or
2. Maintenance of the existing payment schedule, with a reduction in principal which yields the present value of the payment moratorium described above.

The Coalition submits that the relative overall value of these plans is likely to be approximately equal. Moreover, this proposal recognizes the differences in the timing of the capital requirements of individual licensees. Those licensees which have already funded or arranged for funding according to the existing payment schedule should be afforded a significant reduction in principal, to avoid penalizing those entities which are ready, willing, and able to meet existing commitments. A moratorium, on the other hand, is an appropriate choice for licensees facing immediate need to preserve or redirect capital.

V. Refund of Installment Payments

Equity requires the refund of those funds timely submitted to the Commission by C Block licensees in payment of the March 31, 1997, installment payments obligation. The C Block licensees that made payment had no notice of the suspension announced by the Commission late on the day payments were due. Accordingly, these licensees are essentially and unfairly penalized for having complied with their obligations, and are still, despite their prompt requests

^{15/} Some F Block licensees have pre-paid their loan obligations. These licensees should be allowed to take advantage of whatever modifications are adopted.

^{16/} Each licensee should have sufficient time to evaluate its long- and short-term capital requirements. The Coalition suggests a minimum of thirty days from adoption of its proposal within which a licensee may notify the Commission of its choice. To avoid abuse, this choice should be available on a one-time basis only; transferees would be bound by the choice of their predecessors in interest, as would recipients of partitioned licenses.

for refund, deprived of the use of their funds. Fundamental fairness requires the immediate refund of all monies submitted.

At a minimum, these licensees should be provided a credit to principal amounts owing to compensate for the prejudicial loss of access to and control over funds. This amount should be calculated at the prime rate of a major financial institution to approximate the lost opportunity that resulted from making payments they would not have made if they had been provided adequate notice of a rule change.

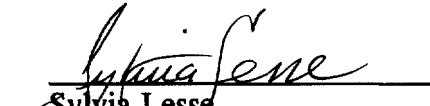
VI. Conclusion

The Coalition supports and encourages the reevaluation of the current installment payment rules, submitting that prudent modification which permits flexibility will promote the public interest by fostering an environment wherein a host of competitive wireless services will be available to the public. In addition, and consistent with the notions of fundamental fairness, the Coalition urges the immediate refund of March 31, 1997, installment payments.

Respectfully submitted,

THE SMALL BUSINESS COALITION

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Communications Venture PCS Limited Partnership

Comtel PCS Mainstreet Limited Partnership

Enterprise Communications Partnership

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Poka Lambro PCS, Inc.

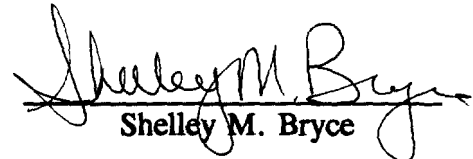
Poka Lambro/PVT Wireless Limited Partnership

Savannah Independent PCS Corporation

SOWEGA Wireless Communciations, LP

CERTIFICATE OF SERVICE

I, Shelley M. Bryce, of *Kraskin & Lesse, LLP*, 2120 L Street, NW, Suite 520, Washington, DC 20037 hereby certify that a copy of the foregoing "**Comments of The Small Business Coalition**" was served on this 23rd day of June 1997, by hand delivery to the following parties:


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